IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1716 OF 2005

Sunil Phulchand Nihinar .. Petitioner

Versus

Sangeeta Sunil Lihinar .. Respondent

Mr.naidu with B.A.Bhandare for petitioner

CORAM : S.C.DHARMADHIKARI, J.

DATE : 25th January 2006.

P.C.

. At the request of Mr.Naidu appearing for petitioner, petition allowed to be withdrawn. In all fairness, Mr.Naidu has invited my attention to the order passed by this Court (Bobde, J) on

26th October 2005 in Writ Petition instituted by petitioner being W.P.4007 of 2005.

2. Mr.Naidu states that the condition imposed in the order of 26th October 2005 passed by this Court has been complied with inasmuch as amount is paid to respondent.

3. In the light of this order, defence of petitioner which was struck off is now restored and the petitioner is permitted by this Court to participate in the proceedings. However, according to Mr.Naidu, order on Interim Application No.125 of 2003 in W.P.No.600/2003 directing petitioner to pay maintenance being not interfered with, the trial court is not permitting petitioner to participate in the matter and it is likely that it will proceed ex parte.

4. In my view, it will be open for

petitioner to point out all aspects as are pointed out in the affidavit filed in this Court on 25th Januatry 2006 and apply that the order granting interim maintenance be either modified, vacated or set aside and all such contentions as are raised in the petition are available for being raised during the course of such application. Needless to state that unless and until such application is deided and appropriate orders passed thereon, petitioner cannot be prevented from participating in the matter. Similarly, it would be open for the respondent to contend that the quantum should be maintained and if the Court below is of the opinion that the same be maintained and petitioner is in arrears, appropriate orders in that behalf may also be passed. Keeping all contentions open of both sides, petition is allowed to be withdrawn.

(S.C.DHARMADHIKARI, J)